

United States Bankruptcy Court

WESTERN DISTRICT OF WASHINGTON-TACOMA DIVISION

In re Jacarae Lea Fairbanks,

 Debtor

NOTICE OF APPEAL AND
STATEMENT OF
ELECTION

Case No.
20-42304-BDL

Chapter
13

NOTICE OF APPEAL AND STATEMENT OF ELECTION

Part 1: Identify the appellant(s)

1. Name(s) of appellant(s): Wilmington Savings Fund Society, FSB, as Owner Trustee of the Residential Credit Opportunities Trust V-C
2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal: Prior secured creditor of real property that was sold to a bona-fide third party purchaser at a trustee's foreclosure sale six days before bankruptcy was filed.

For appeals in a bankruptcy case and not in an adversary proceeding.

For appeals in an adversary proceeding.

☐ Plaintiff

☐ Defendant

☐ Other (describe) _____

☐ Debtor

☒ Creditor

☐ Trustee

☐ Other (describe) _____

Part 2: Identify the subject of this appeal

1. Describe the judgment, order, or decree appealed from: Motion for Retroactive Annulment of the Automatic Stay and Validation of the Execution, Delivery, and Recordation of Trustee's Deed
2. State the date on which the judgment, order, or decree was entered: January 25, 2021

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

1. Party: Jacarae Lea Fairbanks Attorney: David C. Smith
201 St. Helens Ave., Suite #205
Tacoma, WA 98402
(253) 272-4777

Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

- ☐ Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

Part 5: Sign below

/s/ Nancy R. Tragarz

Date: 2/4/21

Signature of attorney for appellant(s) (or appellant(s) if not represented by an attorney)

Name, address, and telephone number of attorney (or appellant(s) if not represented by an attorney):

Nancy R. Tragarz
Ghidotti | Berger
1920 Old Tustin Avenue
Santa Ana, CA 92705
949-427-2010

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

[Note to inmate filers: If you are an inmate filer in an institution and you seek the timing benefit of Fed. R. Bankr. P. 8002(c)(1), complete Director's Form 4170 (Declaration of Inmate Filing) and file that declaration along with the Notice of Appeal.]



A handwritten signature in black ink, reading "Brian D. Lynch".

Brian D. Lynch
U.S. Bankruptcy Judge

(Dated as of Entered on Docket date above)

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

In re:

Jacarae Lea Fairbanks,

Debtor.

Case No. 20-42304-BDL

**ORDER DENYING WILMINGTON'S
MOTION FOR RETROACTIVE
ANNULMENT OF THE AUTOMATIC STAY
AND VALIDATION OF THE EXECUTION,
DELIVERY, AND RECORDATION OF
TRUSTEE'S DEED**

On November 12, 2020, Wilmington Savings Fund Society, FSB, as Owner Trustee of the Residential Credit Opportunities Trust V-C ("Wilmington"), filed a motion seeking an order for retroactive annulment of the automatic stay and validation of the execution, delivery, and recordation of a trustee's deed issued by a foreclosure trustee after a nonjudicial foreclosure of the home of the debtor Jacarae Lea Fairbanks ("Fairbanks"), including supporting declarations. Dkt. No. 21. Fairbanks filed a Response to the Motion for Retroactive Annulment and Relief from Stay and Declarations of Fairbanks and her attorney David C. Smith. Dkt. Nos. 29–31. Wilmington filed a Reply and a Supplemental Declaration of Nancy Tragarz. Dkt. No. 32.

1 The Court issued an oral ruling on January 13, 2020, denying the motion to annul the
2 stay, holding that the execution, delivery recordation of the Trustee's Deed did not fall under
3 the "ministerial act" exception to the automatic stay, and denying relief from stay, but
4 reserving ruling on the issue of whether the automatic stay applies to execution, delivery or
5 recordation of the Trustee's Deed under Washington law. The Court subsequently analyzed
6 the aforementioned pleadings in its Memorandum Decision on Motion for Retroactive
7 Annulment of the Automatic Stay and Validation of Execution, Delivery, and Recordation of
8 Trustee's Deed (Dkt No. 36), which the Court incorporates herein by reference. Therefore, it
9 is hereby
10

11 ORDERED that Wilmington's motion to annul the stay is denied. It is further

12 ORDERED that Wilmington's motion to confirm the recordation of the Trustee's Deed
13 as valid is denied. It is further

14 ORDERED that Wilmington's request for relief from stay is denied. It is further

15 ORDERED that the execution, delivery, and recordation of the Trustee's Deed were
16 void acts because they were in violation of the automatic stay. It is further

17 ORDERED that Wilmington's alternative request for relief from stay to re-execute,
18 redeliver, and rerecord the Trustee's Deed is denied.
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20 ///END OF ORDER///
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4 UNITED STATES BANKRUPTCY COURT
5 WESTERN DISTRICT OF WASHINGTON, TACOMA DIVISION
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7 In re:) Case No.: 20-42304-BDL
8)
9 **Jacarae Lea Fairbanks,**) CHAPTER 13
10)
11) CERTIFICATE OF SERVICE
12)
13 Debtor.)
14)

15 I, Brandy Carroll, declare as follows:

16 I am employed in the County of Orange, State of California. I am over the age of eighteen
17 (18) and not a party to the within action. My business is 1920 Old Tustin Ave, Santa Ana, CA
18 92705.

19 On ***February 5, 2021***, I served the foregoing document(s) described as;

- 20 • **NOTICE OF APPEAL AND STATEMENT OF ELECTION;**

21 The above listed document(s) were served on the interested parties in this action as follows:

22 *via US Mail:*

23 **Debtor:**

24 Jacarae Lea Fairbanks
18610 85th Ave E
Puyallup, WA 98375

Chapter 13 Trustee:

Michael G. Malaier
2122 Commerce Street
Tacoma, WA 98402

25 **Debtors Counsel:**

26 David Smith
Attorney at Law
201 St Helens Ave
Tacoma, WA 98402

US Trustee:

United States Trustee
700 Steward St Ste 5103
Seattle, WA 98101

28 **Judge's Copy:**

Certificate of Service

Eastside Funding, LLC

Ghidotti Berger, LLP
1920 Old Tustin Avenue
Santa Ana, CA 92705
Tele: 949-427-2010

1 Hon. Judge Brian D Lynch
2 1717 Pacific Avenue, Suite 2100
3 Tacoma, WA 98402-3233

Attn: Chris Nelson
3927 Lake Washington Blvd NE
Kirkland, WA 98033

4 **Ladder Properties, LLC**
5 Attn: Ahmad Rabi
6 22525 141st Ave SE
7 Kent, WA 98042

8 Dated: February 5, 2021

9 /s/Brandy Carroll
10 Brandy Carroll
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